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10/763,909	01/26/2004	Valery Chuprin		7797
Ilya Zborovsky 6 Schoolhouse Way Dix Hills, NY 11746				
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EXAMINER				
HWU, DAVIS D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/763,909  
Filing Date: January 26, 2004  
Appellant(s): CHUPRIN, VALERY

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Ilya Zborovsky  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 11 March 2008 appealing from the  
Office action mailed 09 May 2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

6. Claims 1, 2, 4, 7, 9, 10 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Farley.

Farley shows an apparatus and method of stopping and extinguishing forest fires comprising the steps of erecting at least one substantially vertical wall 401 wherein the wall is of a fabric fire-resistant material, unrolling a roll of the fabric so as to erect the wall and configured so that when a forest fire reaches the wall it can be stopped and extinguished, supporting the at least one wall on a plurality of supports extending over a whole height of the at least one wall (see Figures 18 and 19). Once the wall is erected, the fire can be extinguished by conventional means which includes bringing vegetation to the ground and applying anti-fire foam onto the vegetation.

***Claim Rejections - 35 USC § 103***

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
8. Claims 8 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley.

Forming at least one trench and placing the wall in the at least one trench would have been a matter of operator choice, since it involves the mere placement of a known apparatus in which the mere placement of a known apparatus is generally recognized as being within the level of ordinary skill in the art.

### **(10) Response to Argument**

#### In response to the First ground for rejection to be reviewed on Appeal:

Applicant's statement of the material and size of the cloth sheets is of no significance since the Applicant has not claimed any specific material or size of his own fabric. Applicant's argument that the construction of the prior device is impossible to carry out is not persuasive. Farley shows constructing a wall of fire-resistant material by unrolling the material from a roll 402 to stop and extinguish a forest fire (column 2, lines 19-23), and therefore, the prior device of Farley clearly meets the claimed subject matter of claims 1 and 9, and one having ordinary skill in the art knows that the construction of the Farley device could be carried out with the necessary resources. It is true that the rolls of the fabric material are fixed on spikes and they need to be driven into the ground by a tool (a hammer for example), however, this argument is of no significance. It is not understood what is meant by "the spikes must have 3-4 length." The Applicant has not claimed detailed steps of erecting his device as argued on page 10. He claims a general procedure of which Farley clearly shows. It is also clear in Figure 8 of Farley that the construction can be utilized by un-rolling the roll from the column 45 when the column is supported vertically on the ground. Using a 4-legged structure was never claimed. Regarding claims 2 and 10, Figure 19 of Farley shows a plurality of walls 401 of the fire resistant fabric material spaced at a predetermined distance from each other (the distance being the diameter of the containers 405 which hold the rolls. Regarding claims 7 and 14, once the wall of Farley is erected, the fire can be extinguished using anti-fire

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foam since the use of anti-fire foam is widely used in the fire fighting art, and Farley has already disclosed not just erecting to stop a fire but also extinguishing the fire, and the device can be erected at any location as required to fight a fire.

In response to the Second ground for rejection to be reviewed on Appeal:

Regarding claims 8 and 15, forming a trench and then placing the wall in the trench would have been an obvious matter of operator choice since the wall will still carry its intended function of stopping a fire whether it is placed in a trench or not. Placing the wall in a trench would also help prevent the fire from spreading underneath the wall. It is clear in Figures 18 and 19 that the wall of Farley is rolled out horizontally and not vertically upward.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Davis D Hwu/

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